

**BEFORE THE
GOVERNING BOARD
OF THE MOHAVE UNIFIED SCHOOL DISTRICT**

In the Matter of the Accusation Against:

OAH NO. 2011040041

Megan Moore,

Respondent.

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 10, 2011, in Bakersfield, California.

Peter Carton, Attorney at Law, represented the Mohave Unified School District. Kathy O'Neill, California Teachers Association, represented the Respondent.

Evidence was received, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Aaron Houghton, Superintendent of the District, filed the Accusation in his official capacity.

2. Respondent is a certificated employee of the District.

3. On March 10, 2011, the Board adopted Resolution No. 031011-1, to discontinue or reduce particular kinds of services for the 2011/2012 school-year as follows:

Grades K-6 Elementary:

Regular Classroom Teaching Positions (Self Contained)	6 FTE
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SDC Teaching Position	1 FTE
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District Reading Coach	1 FTE
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District Math Coach	1 FTE
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Departmentalized Instruction:

Art	1 FTE
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Science	1 FTE
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Math	1 FTE
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Spanish	1 FTE
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Opportunities Teacher (Classroom)	2 FTE
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English	1 FTE
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TOTAL	16 FTE
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4. The Board passed Resolution 031011-1 pursuant to Education Code section 44955 and made a determination to decrease the number of certificated employees for the ensuing school year by a corresponding number of full-time equivalent positions as set forth in Factual Finding 3.

5. The Board also passed Resolution 031011-2, which established tie-breaking criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination would be based on the needs of the District and its students in accordance with the specific criteria set forth in the resolution. Respondent did not raise a tie-breaking issue in this matter.

6. The Board directed the Superintendent to notify the employees affected by the Board's resolution. Prior to March 15, 2011, the Superintendent notified certificated employees, including Respondent, in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification. Respondent made a timely request for hearing. All other certificated employees served with layoff notices waived their right to a hearing.

7. On March 30, 2011, Superintendent Aaron Haughton made and filed the Accusation against Respondent.

8. Respondent did not file a Notice of Defense, however, the District agreed to allow Respondent to present her case at hearing.

9. The reduction of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

10. The District maintains a seniority list which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. Respondent agreed with her seniority date as listed in the seniority list.

11. Respondent teaches art at the high school level. She asserted that she should not be laid-off because she is the only teacher employed by the District who is credentialed and competent to teach art at 10th, 11th and 12th grade levels. Respondent's testimony at hearing certainly established that she is an outstanding teacher. However, the District has not made a final decision on whether to offer art for the next school year. The most senior teacher credentialed to teach art is Pamela Kies (seniority date: 8/23/1990). Her credential authorizes her to teach art up to the 9th grade level. The Board has discretion, through resolution, to authorize Ms. Kies to teach art to 10th, 11th and 12th grade students.

12. Respondent also argued that this layoff proceeding is based on a declining average daily attendance (ADA) rather than a reduction or discontinuance of particular kinds of services. While the superintendent testified that the District expects a declining enrollment, it was not established that the Board based its resolution solely on declining ADA rather than the stated discontinuance or reduction of particular kinds of services.

13. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

14. Respondent is not certificated and competent to render a service being performed by any employee with less seniority who is being retained.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding.

2. Cause was established as required by Education Code sections 44949 and 44955 to reduce the number of certificated employees due to the reduction of particular kinds of services. The Board's decision to reduce the identified services of respondents was neither arbitrary nor capricious. The decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

3. While Respondent established that she is an outstanding art teacher, the District has the discretion to reduce particular kinds of services, including art. The District has yet to make a final decision as to the number and type of art classes that will be offered next year.

ORDER

Notice may be given to Respondent that her services will not be required for the 2011-2012 school year.

Dated: May 17, 2011

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings